

STATE OF CALIFORNIA

Public Utilities Commission
San Francisco

M e m o r a n d u m

Date: February 24, 2016

To: The Commission
(Meeting of February 25, 2016)

From: Nick Zanjani, Senior Legislative Liaison
Office of Governmental Affairs (OGA) – Sacramento

Subject: **SB 215 (Leno) – California Public Utilities Commission**
As amended: January 4, 2016

RECOMMENDED POSITION: SUPPORT IF AMENDED

SUMMARY OF BILL

An act to amend Sections 309.6, 1701.1, 1701.2, 1701.3, 1701.4 and 1701.5 of, and to add Sections 1701.6, 1701.7 and 1701.8 to, the Public Utilities Code. Specifically, this bill would require:

- the California Public Utilities Commission (CPUC) to adopt procedures on disqualification of commissioners due to appearance of bias or prejudice. For ratesetting or adjudicatory proceedings, the bill would disqualify a commissioner or an Administrative Law Judge (ALJ) for an appearance of bias or prejudice based on specified criteria. A commissioner or ALJ could not rule on a motion to disqualify themselves;
- the categorization of all proceedings, including those that do not require hearings; all categorization determinations and any rulings expanding the scope of a proceeding are subject to rehearing requests for a 10-day period – the CPUC would resolve the rehearing requests at the conclusion of the proceeding;
- that the CPUC commissioners may meet in a closed session to discuss administrative matters so long as no collective consensus is reached or vote taken on any matter requiring a vote of the commissioners – requires the CPUC to adopt rules to define administrative matters;
- the CPUC to permit oral and written comments received from public participation hearings to be included in the record of proceedings – and that parties be given a chance to respond to the comments;

- no limit on peremptory challenges in cases in which the administrative law judge has, within the previous 12 months, served in any capacity in an advocacy position at the CPUC, been employed by a regulated public utility, or represented a party or has been an interested person in the case;
- the CPUC remove the restriction that the assigned commissioner must issue an alternate at the same time as the Proposed Decision in ratesetting proceedings;
- that timing requirements to conclude proceedings start when the proceeding is initiated, not the date that the scoping memo is issued; and
- the CPUC to allow all-party conferences after the issuance of a Proposed Decision or Presiding Officer's Decision. Defines "all party conference" as a public hearing held on the record before a quorum of commissioners at which parties to a proceeding shall have the right to participate and communicate their views regarding any factual, legal or policy issue in the proceeding. Requires the CPUC to adopt rules for implementing all-party conferences that ensure the broadest participation by parties to a proceeding.

The Bill proposes changes to the CPUC's ex parte rules, specifically requiring:

- Rule changes to define "procedural matters" and prohibiting communications between an interested person and decisionmaker on matters not specifically defined as procedural - the assignment of a commissioner or ALJ is not a procedural matter.
- "decisionmaker" to include the executive director of the commission, the general counsel of the commission, and the chief ALJ;
- a person involved in issuing credit ratings or advising utility investors as a person with a financial interest to be defined as an "interested person" - ex parte communications between a person with a financial interest who is not a party must be reported by the decisionmaker;
- the CPUC to establish and maintain a communications log summarizing all ex parte communications – reports are due within 3 days of the communication. This log must be available to the public on the CPUC's website by July 1, 2017.
- the CPUC to establish rules for reporting prohibited ex parte communications in adjudication and ratesetting proceedings, including at conferences. The rules must include a one-day reporting requirement for violators and a duty to report the substance of the conversation. The decisionmaker must confirm the veracity of timely reports. The reporting duty shifts to the decisionmaker if the report is untimely;
- parties be given an opportunity to respond to reported ex parte violations and that unreported ex parte violations are grounds for a petition to modify or set aside a decision – the commission is required to act on the petition within 180 days;
- that the CPUC prohibit ex parte communication from being part of the evidentiary record of the proceedings; and

- the CPUC to prohibit ex parte communications in ratesetting proceedings, with some exceptions: oral all-party meetings with 3 days notice, written communications transmitted to all parties on the same day as the original communication, and all-party communications are allowed during the ratesetting deliberative window for ex parte communications.

In addition, the bill would—

- Delete the provision for ratesetting and quasi-legislative proceedings that limits an order to extend a deadline for resolving the proceeding to no more than 60 days;
- Provide for penalties for violations of ex parte communication rules, including allowing the CPUC to impose a civil penalty where financial benefits exceed the maximum of the \$50,000 limit per violation;
- Authorize the Attorney General to bring an enforcement action in the Superior Court for the City and County of San Francisco against a decisionmaker or employee of the CPUC who violates the ex parte communication rules.

CURRENT LAW

- Existing law requires the CPUC, upon initiating a hearing, to assign one or more commissioners to oversee the case and an administrative law judge, where appropriate. Existing law requires the assigned commissioner to prepare and issue, by order or ruling, a scoping memo that describes the issues to be considered and the applicable timetable for resolution.
- Existing law requires the CPUC, to adopt procedures on the disqualification of administrative law judges due to bias or prejudice similar to those of other state agencies and superior courts. The legal standard for disqualification of commissioners in a ratesetting or quasi-legislative proceeding is whether there is “clear and convincing” evidence that a commissioner “has an unalterably closed mind on matters critical to the disposition of the proceeding.”
- Existing law regulates communications in hearings before the commission and defines “ex parte communication” to mean any oral or written communication between a decisionmaker and a person with an interest in a matter before the commission concerning substantive, but not procedural, issues that does not occur in a public hearing, workshop, or other public proceeding, or on the official record of the proceeding on the matter.
- Existing law defines “person with an interest” to mean, among other things, a person with a financial interest in a matter before the commission, or an agent or employee of the person with a financial interest, or a person receiving consideration for representing the person with a financial interest.
- Existing law requires the commission, by regulation, to adopt and publish a definition of the terms decisionmaker and interested persons for those purposes, along with any requirements for written reporting of ex parte communications and

appropriate sanctions for noncompliance with any rule proscribing ex parte communications.

- Existing Law requires the CPUC to prohibit ex parte communications in ratesetting cases, except as provided. If an ex parte communication meeting is granted to any party, the CPUC is required to grant all other parties individual ex parte meetings of a substantially equal period of time and to send a notice of that authorization at the time that the request is granted.
- Existing law permits the CPUC to establish a period during which no oral or written ex parte communications are permitted and authorizes the commission to meet in closed session during that period.
- Existing Law requires the CPUC to permit ex parte communications in quasi-legislative cases without restriction.

AUTHOR'S PURPOSE

The author states that the bill “will bring much needed reforms to the operation of the California Public Utilities Commission (CPUC). Recent events and ongoing revelations about the internal workings of the agency indicate that these changes are necessary.”

DIVISION ANALYSIS (Legal Division)

Sec. 1. Bias – Commissioner & ALJ Disqualification Procedures (Section 309.6)

Standard for Disqualification. The bill proposes an “appearance of bias or prejudice” standard for disqualification of a commissioner or ALJ in ratesetting and adjudication proceedings. This is inconsistent with the Administrative Procedures Act disqualification for bias, prejudice, or interest standard. *To make the standard consistent with that of other agencies see the CPUC suggested amendment number 1 below.*

Procedures for Disqualification. Subsection (c) prohibits a commissioner or ALJ from ruling on a motion seeking to disqualify the commissioner or ALJ. Compliance with this section should not be problematic, and could address concerns of parties about the fairness of CPUC proceedings.

Sec. 2. Ex Parte Generally (Section 1701.1)

This section would make eight changes to ex parte rules and restrictions. Specifically it would—

1. Require the CPUC, in a rulemaking, to amend its Rules to state the types of communications that constitute “a procedural matter”.
2. Expand the definition of decisionmaker to include the general counsel; executive director; advisors (“personal staff of a commissioner if the staff is acting in a policy or legal advisory capacity”); and the chief ALJ.

3. Denote rating agencies, utility investors, and related financial advisors as interested persons subject to the ex parte rules – even if they are not parties.
4. Change reporting obligations, so that the onus to report ex parte violations shifts to the decisionmaker if the violator does not self-report within one day.
5. Ban individual ex parte communications in ratesetting proceedings.
6. Increase ex parte reporting detail in Public Utilities (PU) Code Section 1701.1(e)(3).
7. Establish a process for addressing violations of the ex parte rules, most significantly by creating a remedy for parties to seek modification of a decision based on an ex parte violation in PU 1701.1(e)(4) and (5). The CPUC must issue a decision within 180 days.
8. Apply the ex parte rules to “ex parte communications that occur at conferences” including “communications in a private setting or during meals, entertainment events, and tours, and informal discussions among conference attendees.” This could make it more difficult for decisionmakers (commissioners, advisors, etc.) to attend conferences.

These proposed changes would significantly delay proceedings at the CPUC. The changes that would most greatly affect CPUC operations are analyzed, below:

Expanded definition of decisionmaker. Expanding the definition of decisionmaker to include the General Counsel, Executive Director, and Chief ALJ would negatively affect CPUC operations and relations with the public by limiting the ability of CPUC leadership to interact with the public and to address public concerns. These changes would detract from the recent work of CPUC commissioners and leadership to become more accessible to the public, including local governments. The CPUC’s public subcommittees are working on a series of initiatives to strengthen the accessibility, transparency, and usefulness of the proceeding record for the public. The Executive Director is improving CPUC outreach to cities and counties.

These provisions would also alter the chain of command at the CPUC and could make managing and leading staff at the CPUC more difficult. For example, the General Counsel could not consult with a party about the scope and status of a separate, related Public Records Act request made by the party. Further, a city that is also a party concerned about the operating pressure of a gas line in their jurisdiction could not meet with the Executive Director (or General Counsel or one of the commissioners) about how best to consult with the utility on the matter. The statutory limitations on decisionmaker communications in these instances will drive more work to deputy and lower-level staff, and over the long-term could bolster the view that the CPUC is out-of-touch and inaccessible. Access by the CPUC’s advisory staff (including the Executive Director and General Counsel) to information, analysis, opinions, and recommendations

from the widest variety of sources yields diversity and adds value to decision-making. Access should be encouraged rather than prohibited. See *Suggested Amendment number 2 below*.

Reporting obligation changes. These changes would shift the responsibility to report ex parte contacts to the decisionmaker. The provision will also interact with other requirements in this bill, notably the expansion of the definition of decisionmaker (expansion of the group that will have a reporting obligation), the provisions on potential Attorney General enforcement of ex parte violations, and the appearance of bias provision that applies to communications before the commencement of a proceeding. See *Suggested Amendment number 3 below*.

Remedies for ex parte violations. This change creates a remedy for parties to seek modification of a decision if an ex parte violation occurred before a vote on the decision. Currently parties can seek modification based on new or changed facts not known during the pendency of the proceeding. See *Suggested Amendment number 4 below*.

Other changes to administrative matters and public participation. subsection (f) allows the CPUC to meet and discuss “administrative matters” in closed session – after the CPUC has defined “administrative matters” in its Rules. This could significantly aid CPUC operations.

Subsection (g) requires the CPUC to make comments received at Public Participation hearings part of the record of the proceedings – and provides parties an opportunity to respond to these comments. This is consistent with the CPUC’s commitment to increasing the public’s access to information about its proceedings. Statutory and administrative procedures and processes should be revised to permit and ensure that public comments are entered into the evidentiary record or proceeding record at Public Participation Hearings and other meetings convened by the CPUC. In addition, statutory clarification should ensure that the CPUC is authorized to consider and rely upon interagency and stakeholder working group reports, academic research, and other information. See *Suggested Amendments 5 and 6*.

Sec. 3. Ex parte – Adjudication Proceedings (Section 1701.2)

Provisions of this section allow for unlimited peremptory challenges for specified reasons and require the commission to adopt a rule to implement all-party conferences as a means for decisionmakers to collectively hear the views of the parties. The use of all-party conferences would be discretionary, after a decision is proposed. The section defines “all party conference” as a public hearing held on the record before a quorum of commissioners at which parties to a proceeding shall have the right to participate and communicate their views regarding any factual, legal or policy issue in the proceeding.

All-party conferences are currently called in some CPUC hearings. To the extent this provision creates a new procedural tool for parties to meet and discuss matters of concern with commissioners, this could be beneficial. If the CPUC is required to set

rules for all-party conferences in a proceeding then parties of interest will have an opportunity to comment and submit detailed evidence on this provision. With the input of these interested persons, the CPUC should be able to strike a balance between giving parties access to the commissioners at the end of a proceeding and efficiently concluding cases.

Sec. 4. Ex Parte – Ratesetting Proceedings (Section 1701.3)

This section permits an alternate decision to be issued by the assigned commissioner after the proposed decision has been issued. Under current rules, an alternate by the assigned commissioner must be issued at the same time as a proposed decision. Frequently, commissioners learn about issues that they wish to address in party comments on a proposed decision. This change would allow the assigned commissioner to address these issues in an alternate. This change is beneficial.

Subsection (h) limits ex parte communications to oral communications where all parties are invited and given three days' notice, and written communications that are transmitted to all parties on the same day as the communication to the decisionmaker.

Technical challenge. A provision (PU 1701.3(h)(3)) gives decisionmakers discretion to allow written communications concerning procedural matters – as defined in the CPUC's Rules; the bill is silent on the process for granting this approval, and it is not clear how this can be done given other restraints on communications. Subsection (h) also changes the provisions of the CPUC's ratesetting deliberative process – it is unclear what type of discussions would be permitted in closed session. Ratesetting deliberative meetings are a valuable tool for commissioners to apply their expertise to matters before the CPUC.

Subsection (j) allows for all-party conferences after the issuance of the PD.

Sec. 5. Ex Parte—Quasi-Legislative Proceedings (Section 1701.4)

In quasi-legislative proceedings ex parte contacts may be permitted, subject to the logging of contacts pursuant to PU 1701.6, described below. The most likely effect of this requirement is that decisionmaker outreach efforts on any subject that could potentially be at issue in a quasi-legislative proceeding will be discouraged. This will have a negative effect on CPUC decisionmaking. In quasi-legislative proceedings that deal with industry-wide concerns affecting a range of entities, decisionmakers should have broad access to diverse views. The ability of commissioners, subject-matter experts selected because of their experience, to solicit input and encourage broad participation should be buoyed.

This section also introduces the concept of “assigned technical advisory staff” to assist the assigned commissioner in preparing a proposed rule or order. This clarification could helpfully emphasize the input of technical advisory staff in conducting the proceeding and providing expert advice and analysis to decisionmakers.

Sec. 6. Measuring Time to Complete Proceedings (Section 1701.5)

In ratesetting and quasi-legislative cases, this section changes the start date for the 18-month proceeding timeline to the date the proceeding is initiated, not the date the scoping memo is issued. This addresses stakeholder concern that a new scoping memo can “restart” the 18-month clock.

Sec. 7. Communications Log (Section 1701.6)

Summarily, the CPUC must establish a “communications log summarizing all oral and written ex parte contacts” by July 1, 2017. The log must include dates, persons involved, and proceedings that were the subject of each communication “to the extent known”. Contacts must be reported no later than three working days after the communication.

The communications log required by this section applies to decisionmaker communications with interested persons, a much broader category than the current voluntary reporting of contacts with regulated entities per the directive of former Executive Director Paul Clanon. Decisionmakers reporting under this section are narrower than in the Paul Clanon directive (industry division directors are excluded). *See Suggested Amendment number 8 below.*

Sec. 8. CPUC Enforcement (penalties imposed by the CPUC) (Section 1701.7)

This section would make it easier for the CPUC to fine persons having prohibited conversations with decisionmakers and to return the fine amounts to ratepayers. Subsection (c) states explicitly that civil penalties assessed under the section “upon entities whose rates are determined by the commission shall be in the form of credits to the customers of that entity. Civil penalties collected from other entities shall be deposited in the General Fund.”

Sec. 9. Attorney General Enforcement (civil penalties imposed by the Attorney General) (Section 1701.8)

This section would permit the Attorney General to prosecute CPUC staff and decisionmakers (including commissioners) in San Francisco Superior Court for violating ex parte rules. The court would be required to expedite the proceeding and is provided specified factors to determine the appropriate fine. The section lists factors the court can consider in determining the appropriate relief including the “financial resources of the decisionmaker or employee.”

Modification of case law, general law, and common law enforcement for ex parte violations should not limit state employee rights. For example, public entities must provide for the defense of any civil action or proceeding brought against an employee for acts within the scope of employment.¹ In addition, a public entity may defend employees for criminal actions related to acts within the scope of the employee’s

¹ See Government Code Section 995.

employment upon a determination the defense would be in the “best interests” of the entity.² See *Suggested Amendment number 9 below*.

SAFETY IMPACT

To the extent the measures in this bill would increase transparency and accountability at the CPUC, there should be an incremental enhancement to the safety of California citizens. Defining “assigned technical advisory staff” that assist the assigned commissioner in preparing a proposed rule or order in statute should help staff to provide commissioners expert guidance—including on safety matters—in all proceedings.

RELIABILITY IMPACT

No Change.

RATEPAYER IMPACT

No change.

FISCAL IMPACT

Significant fiscal impacts driven by proceedings to implement the bias standards for commissioners and Administrative Law Judges, to update ex parte rules including defining procedural matter and adopting a definition of “administrative matters”, and to set rules for all-party conferences.

Additional fiscal impact associated with the inclusion of Public Participation Hearing statements in the record, and the associated increase in testimony and challenges to testimony in the evidentiary record of each proceeding.

Related legal work to advise and represent the CPUC and commissioners with respect to bias actions. Additional legal impact driven by the novel “appearance” of bias or prejudice standard.

Additional, though modest, impacts to complete proceedings and to log communications.

ECONOMIC IMPACT

No change.

LEGAL IMPACT

This bill would make the General Counsel, Executive Director and Chief ALJ decisionmakers for the purposes of ex parte rules – making informed management of CPUC’s attorneys, ALJs and staff more difficult, because subordinates would have

² See Government Code Section 995.8.

access to a greater amount of information from interested persons. Moreover, as ex parte communications get pushed down the organization structure they may become more opaque, thus frustrating the goal of transparency.

This bill would institute an ambiguous bias standard that could lead to a significant increase in litigation.

A number of bill provisions would require ongoing legal advice, interpretation and oversight to assure compliance: communication log requirements, guidance to decisionmakers attempting public outreach efforts, communication protocols for decisionmakers working across state lines on California Independent System Operator (CAISO) regionalization efforts – it is unclear whether the communications with the CAISO itself could disqualify a decisionmaker in a future proceeding in which the CAISO becomes a party.

The overall impact of the various provisions of this legislation would be to restrict decisionmaker conversations with anyone who could potentially become a party in any proceeding that could potentially be opened by the CPUC. This would make any type of public outreach efforts by decisionmakers onerous and would likely result in very conservative legal guidance, restricting the accessibility of decisionmakers.

LEGISLATIVE HISTORY

SB 512 (Hill) relates to CPUC operations and governance.

SB 661 (Hill) regarding protection of subsurface installations.

SB 1017 (Hill) CPUC: public availability of utility supplied documents.

Similar reform efforts failed last year:

- AB 825 (Rendon, 2015), vetoed, proposed a suite of reforms of the CPUC to make the CPUC more accessible and transparent to the public.
- AB 1023 (Rendon, 2015), vetoed, proposed to codify the summary log requirements currently required at the CPUC for ratesetting proceedings and extends those requirements to quasi-legislative proceedings.
- SB 48 (Hill, 2015), vetoed, proposed a suite of reforms of the CPUC, including modifying the role of the president, meeting location requirements, and other reforms.

Prior legislation:

- AB 1494 (Eng, Chapter 150, Statutes of 2009) amended the Bagley-Keene Open Meeting Act to prohibit a majority of the members of a state body from using a series of communications of any kind to discuss or deliberate on an item of business before the body.

- SB 611 (Hill, as amended April 15, 2013) proposed reforms of the CPUC, including repealing some of the powers of the president. The bill was successfully voted out of Senate Committee on Energy, Utilities and Communications. It was subsequently amended numerous times, and ultimately chaptered into law with unrelated language regarding modified limousines.

Informational Hearings

Assembly Utilities & Commerce

Informational Hearing: California Public Utilities Commission Ex Parte Communications and Related Practices

July 13, 2015³

Office of Planning & Research

Workshop on Government Decision-Making and Open Meetings

June 22, 2015⁴

Senate Energy, Utilities & Communications

CPUC & ORA Annual Report to the Legislature and Initial Inquiry Into the Adequacy of Rules Governing Ex Parte Communication and Safety.

March 3, 2015⁵

PROGRAM BACKGROUND

This bill would, among other things, make significant changes to ex parte rules and restrictions.

The CPUC commissioners established three subcommittees that meet regularly (generally bi-weekly) and discuss matters of concern, usually related to commission operations, in public. All five commissioners regularly attend. The three committees are—

- (1) Finance and Administration⁶;
- (2) Modernization⁷; and
- (3) Policy and Governance.⁸

³ <http://autl.assembly.ca.gov/2015hearings>

⁴ https://www.opr.ca.gov/s_oprworkshop062215.php

⁵ <http://seuc.senate.ca.gov/20132014informationalhearings>

⁶ <http://www.cpuc.ca.gov/financeandadministration/>

⁷ <http://www.cpuc.ca.gov/Modernization/>

⁸ <http://www.cpuc.ca.gov/policyandgovernance/>

The CPUC has undertaken a strategic planning initiative.⁹ As part of the planning process the CPUC is developing strategic directives. Two of the directives are directly implicated in this legislation: (1) Consumer Protection, Education, Assistance and Engagement, and (2) Decisionmaking. The commissioner subcommittees discuss and develop these directives in public meetings. The Finance & Administration Subcommittee is tasked with the consumer directive and the Modernization Subcommittee is tasked with the Decisionmaking directive.

SUMMARY OF SUGGESTED AMENDMENTS

This bill is one of a number of bills proposing reforms to CPUC governance. The goal of the CPUC's suggested amendments is to align the bill with the *Principles for Reform* document that the Governor's Office has asked stakeholders to consider (please find this document attached). Amendments to this bill should be consistent with the outlined *Principles*.

- The California Public Utilities Commission is continuing and expanding its efforts to increase public safety in every area of decision-making and enforcement.
- The California Public Utilities Commission is committed to increasing the public's access to information about its proceedings.
- The California Public Utilities Commission is focused on expanding accountability and transparency in all its activities.

Because the potential for inter-related provisions from numerous CPUC reform bills, the specific amendments suggested below do not reflect all potential CPUC reforms consistent with the *Principles*. The suggested amendments below are limited to changes to the current wording of SB 215.

1. Remove "appearance" from bias standard and make the disqualification standard for CPUC Commissioners similar to that of other state officials.

Remove bias provisions that apply to private communications before the commencement of a proceeding. This provision is difficult to administer and will make it difficult for decisionmakers to have candid conversations on any topic related to CPUC regulation. Commissioners cannot know what is going to be at issue, and which parties will be involved, in future proceedings. The provision as written would reduce transparency at the CPUC by resulting in more limited access to decisionmakers.

2. Remove the executive director, the attorney for the commission (the general counsel), and the chief ALJ from the definition of decisionmaker.

⁹ <http://www.cpuc.ca.gov/strategicplanninginitiative/>

This suggestion is consistent with the Principle that states, “Access by the Commission’s advisory staff (including the Executive Director and General Counsel) to information, analysis, opinions and recommendations from the widest variety of sources yields diversity and adds value to decision-making.”

3. Require decisionmakers report ex parte contacts when parties do not in ratesetting and adjudication proceedings.
4. Remove the provisions that allow for appeals of the categorization of proceedings and motions for reconsideration based on ex parte violations. These provisions are overly complex. The CPUC’s current rules allow for parties to request reconsideration of decisions based on legal error and for facts that were not known at the time decisions were adopted.
5. Make comments at “other meetings convened by the CPUC” (in addition to Public Participation Hearings) part of the evidentiary or administrative record.

This suggestion is consistent with the Principle that states, “Statutory and administrative procedures and processes should be revised to permit and ensure that public comments are entered into the evidentiary record or proceeding record at Public Participation Hearings and other public meetings convened by the PUC.”

6. Clarify in statute that the CPUC is authorized to consider and rely upon interagency and stakeholder working group reports, academic research, and other information.

This suggestion is consistent with the Principle that states, “Statutory clarification should ensure that the Commission is authorized to consider and rely upon interagency and stakeholder working group reports, academic research, and other information.”

7. Allow individual ex parte contacts in ratesetting cases, but require ex parte reporting via a Commissioner’s log. Mandate quiet time three days before consideration of a proposed decision to allow for adequate notice for any equal time request.

This suggestion is consistent with the Principle that states, “Ratesetting cases relate to specific utilities but are often large proceedings with multiple parties, significant policy issues that affect all utilities, and broad impacts on ratepayers and the public. Commissioners must base their decisions in ratesetting cases upon the evidentiary record, but frequently need to consider the impacts of those decisions on large groups of utility customers and interested parties. Ratesetting proceedings have strict procedural and due process requirements, which include reporting of ex parte communications between decision-makers and interested parties. Ex parte communications for ratesetting proceedings merit more accountability than currently exists through Commissioner logging of communications with interested parties and a prohibition on ex parte communications in ratesetting cases at conferences.”

8. Eliminate Quasi-Legislative ex parte reporting requirements. Procedural impediments should not be imposed that discourage participation by a wide variety of persons and entities interested in such proceedings.

This suggestion is consistent with the Principle that states, "Quasi-legislative cases pertain to policy issues relating to the prospective rights and obligations applicable to entire industries, classes of companies, customers or stakeholders. Procedural impediments should not be imposed that discourage participation by a wide variety of persons and entities interested in such proceedings."

9. Attorney General enforcement provisions should be eliminated. The Attorney General already has recourse for Commissioner wrongdoing.

STATUS

1/26/2016 In Assembly. Held at desk.

SUPPORT/OPPOSITION

Support:

The Utility Reform Network (Source)
Consumer Federation of California
Sierra Club California

Opposition:

None on file

VOTES

01/26/16 Senate Floor 37-0

01/21/16 Sen Appropriations 7-0

01/13/16 Sen Energy, Utilities and Communications 10-0

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BILL LANGUAGE:

SB 215 (Leno) as amended January 4, 2016

http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201520160SB215

ATTACHMENT

Principles for Reform
Safety, Public Access, Accountability and Transparency
The California Public Utilities Commission

Ensure Public Safety

The California Public Utilities Commission is continuing and expanding its efforts to increase public safety in every area of decision-making and enforcement.

In particular, we recommend implementing the following policies that will improve public safety:

- Safety must be an integral part of all rulemakings. In 2014 and 2015, the Commission embarked on ground breaking programs to mandate systematic risk assessment in utility investments, including adoption of a requirement that the Assigned Commissioner and Administrative Law Judge in a proceeding certify that any proposed decision has addressed relevant safety issues. The Commission should complement those efforts with additional inspection and enforcement activities.
- Safety should be institutionalized to provide the Commissioners expert guidance and analysis on safety planning, investments and enforcement. An Office of Safety Management should be created with the sole responsibility of assessing and advocating for safety in all Commission proceedings.
- As part of the Commission's responsibilities to reduce greenhouse gas emissions and build upon the findings of the Commission pursuant to the fugitive methane leak reduction strategy in Senate Bill 1371, the Commission should assess the next steps necessary to upgrade the gas distribution with a special concentration on the gas meter, and pipes leading to and from the meter, which are more frequently prone to leaks.
- The Commission should be empowered to enforce safety requirements in the case of poor excavation practices that threaten utility infrastructure and pose significant risks to the public. The Commission should be granted citation authority in cases where excavation damage has occurred but the excavator has failed to call 811 prior to commencing excavation

Increase Public Access

The California Public Utilities Commission is committed to increasing the public's access to information about its proceedings.

Specifically, the following steps will ensure that the public is better informed of the PUC's activities:

- The Commission's record in all contested formal proceedings¹ should be made accessible to the general public through the Commission's website in an easy, convenient and timely manner. Increased funding will be needed to ensure that the Commission can make the record publicly accessible, while ensuring adequate compensation for court reporters.
- Statutory and administrative procedures and processes should be revised to permit and ensure that public comments are entered into the evidentiary record or proceeding record at Public Participation Hearings and other public meetings convened by the PUC.
- Statutory clarification should ensure that the Commission is authorized to consider and rely upon interagency and stakeholder working group reports, academic research, and other information.
- The number and frequency of Commission voting business meetings held in Sacramento and other areas of the State outside of San Francisco should be increased to at least once a quarter.
- Public Utilities Code section 583 should be revised to better enable the PUC to respond in a full, complete, and timely manner to Public Records Act requests and to make documents in proceedings available to the public in a timely and complete fashion.
- Existing restrictions prohibiting discussion among more than two Commissioners outside of a noticed, public business meeting should be adjusted to enable them to discuss and deliberate the diverse public input they've received and complex legal and technical issues by conducting more frequent ratesetting deliberative meetings and considering administrative and managerial issues.²

¹ Including prepared testimony, exhibits, reporters' transcripts, etc.

² Provided no vote is taken or collective consensus is reached on any substantive matter.

Expand Accountability and Transparency

The California Public Utilities Commission is focused on expanding accountability and transparency in all its activities.

In particular, the following actions will help to institutionalize these critical values:

- High level Commission officials who report to the Commission should be directly accountable to the Commissioners for their performance and the Commission should establish performance metrics and evaluate their performance on a regular basis.
- Adjudication cases pertain to issues relating to the existing rights and responsibilities of individual utilities and parties. Ex parte contacts in adjudication cases are currently and should continue to remain prohibited.
- Ratesetting cases relate to specific utilities but are often large proceedings with multiple parties, significant policy issues that affect all utilities, and broad impacts on ratepayers and the public. Commissioners must base their decisions in ratesetting cases upon the evidentiary record, but frequently need to consider the impacts of those decisions on large groups of utility customers and interested parties. Ratesetting proceedings have strict procedural and due process requirements, which include reporting of ex parte communications between decision-makers and interested parties. Ex parte communications for ratesetting proceedings merit more accountability than currently exists through Commissioner logging of communications with interested parties and a prohibition on ex parte communications in ratesetting cases at conferences.
- Quasi-legislative cases pertain to policy issues relating to the prospective rights and obligations applicable to entire industries, classes of companies, customers or stakeholders. Procedural impediments should not be imposed that discourage participation by a wide variety of persons and entities interested in such proceedings.
- Access by the Commission's advisory staff (including the Executive Director and General Counsel) to information, analysis, opinions and recommendations from the widest variety of sources yields diversity and adds value to decision-making.